

SUPPLEMENTARY CONDITIONS - BOND

FOREWORD

- A. Further Supplementing the Authority's Standard Specifications, Section 00700 - General Conditions, the following Supplementary Conditions will apply.
- B. References to Article Numbers in the following Supplementary Conditions unless otherwise stated are to be the aforesaid Standard Specifications, Section 00700 - General Conditions. In case of conflict between these Supplementary Conditions and the aforesaid Standard Specifications, Section 00700 - General Conditions, these Supplementary Conditions will take precedence and shall govern.
- C. The Supplementary Conditions are included herein to augment the Standard Specifications, Section 00700 - General Conditions, with additional information which is applicable to this project.
- D. The enforcement of the requirements of any of the following Supplementary Conditions of the General Conditions shall not be construed as waiving any of the rights of the Authority contained in any of the other conditions of the Contract.

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1. MODIFICATIONS TO THE GENERAL CONDITIONS

A. Article 3.2 - CERTIFICATION OF COMPLIANCE

CERTIFICATE OF COMPLIANCE (Manufacturer of Fabricated Material)

Date_____20____

WE HEREBY CERTIFY THAT _____
(Description, or Kind of Material)

Furnished to _____
(Name of Contractor Prime or Sub)

For Use on _____ Federal No. _____
(Project No.)

In the Amount of _____
(Quantity Represented)

Identify by _____
(Label, Marking, Seal No., Consignment, or Waybill No.)

Shipped on _____20__ Delivered on _____20____

Shipped via _____
(Method of Shipment, Car No., or Truck No.)

MEETS THE REQUIREMENTS OF THE PERTINENT PROJECT PLANS, SUPPLEMENTARY CONDITIONS AND SPECIFICATIONS OF THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY, IN ALL RESPECTS, PROCESSING, PRODUCT TESTING AND INSPECTION CONTROL OF RAW MATERIALS ARE IN CONFORMANCE WITH ALL APPLICABLE SPECIFICATIONS, DRAWINGS AND/OR STANDARDS OF ALL ARTICLES FURNISHED.

All records and documents pertinent to this certificate and not submitted herewith will be maintained available by the undersigned for a period of not less than three years from date of final payment by the MBTA.

(Manufacturer of Supplier)

Signed by _____

Title _____ NOTARY STAMP

Notarized Signature of Person
having Legal Authority to bind the Supplier

INSTRUCTIONS

1. The above is a suitable sample of an acceptable certificate.
2. Certificate is to be submitted in triplicate to the Engineer prior to, or on delivery of, material.
3. The following regulation is applicable to all projects involving Federal Funds.

Section 1001 of Title 18 of the United States Code (Criminal Code and Criminal Procedure) is applicable to this statement. (Section 1001 of Title 18, among other things, provides that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious or

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fraudulent statement or entry, in any matter within the jurisdiction of any Department or Agency of the United States shall be fined not more than \$10,000 or imprisoned not more than five years, or both).

B. **Article 6.1 - PROSECUTION OF WORK:** *Insert a new subarticle A. 2. as follows: (add additional subarticles as necessary)*

2.

<u>Milestone</u>		<u>No. of Calendar Days</u>	<u>Liquidated Damages</u>	
1. XXXX		XXX	\$XXXX/day	
2. Substantial Completion of work		XXX	\$XXXX/day	
3.Completion of Entire Work		XXX		
C. Article CLAIMS FOR DAMAGES: <i>Insert table in Article A. Per Diem Rate</i>				6.5 DELAY -

A.

Owner Caused Delay Damages	
Per Diem Rate	\$XX per calendar day

D. **INSURANCE REQUIREMENTS:** *Insert a new subarticle N. as follows:* **Article 7.1 -**

N. **COVERAGE AND LIMITS TABLE-** ***{ Designer Notes: Tier level is based on contract amount. See tier table for limits and coverage amounts. Display only the tier and category applicable to the project. See Sample table of project with Tier 4.**

TYPE OF INSURANCE		COVERAGE LIMITS									
CGL		\$1M/\$2M									
Auto		\$1M									
Umbrella		\$25M									
WC/EL		Statutory/ \$1M Employer's Liability									
Railroad Protective		\$5M/10M (if applicable, if not N/A)									
Air Craft		\$5M (if applicable, if not N/A)									
Water Craft		\$5M(if applicable, if not N/A)									
Pollution Liability		\$10M									
Builders Risk/ Property		Contract Value									
Cyber	Construction	CGL	Auto	Umbrella	WC/EL	Railroad Protective	Air Craft	Water Craft	Pollution Liability	Builder's Risk/ Property	Cyber Liability
	Contract Amount					*	*	*			*
1	<\$1M	\$1M/\$1M	\$1M	\$1M	Stat \$1M	\$5M/10M	\$5M	\$1M	\$1M	Contract Value	N/A
2	\$1M-5M	\$1M/\$2M	\$1M	\$5M	Stat \$1M	\$5M/10M	\$5M	\$1M	\$3M	Contract Value	\$1M
3	\$5M - \$15M	\$1M/\$2M	\$1M	\$10M	Stat \$1M	\$5M/10M	\$5M	\$5M	\$5M	Contract Value	\$1M
4	\$15M-\$50m	\$1M/\$2M	\$1M	\$25M	Stat \$1M	\$5M/10M	\$5M	\$5M	\$10M	Contract Value	\$1M
5	\$50M -	\$2M/\$4M	\$1M	\$50M	Stat	\$5M/10M	\$5M	\$5M	\$20M	Contract	\$1M

	\$100M				\$1M					t Value	
6	>\$100M	\$2M/\$4M	\$1M	\$100M	Stat \$1M	\$5M/10M	\$5M	\$5M	\$25M	Contract Value	\$1M

Tier Level Table (Below table is for reference only. To be deleted once Tier level has been set)

E. **Article 8.7- DUTY TO LIMIT INTERFERENCE WITH OPERATIONS** - Insert additional Articles for any specific requirements related to operations impacts.

2. MINIMUM STATE WAGE RATES

- A. The minimum wage rates to be used for this Contract are shown on the schedules on the following pages. The rates shown on these schedules are the minimum to be paid during the life of the Contract. It is, therefore, the responsibility of bidders to inform themselves as to the local labor conditions such as the length of the work day and work week, overtime compensation, health and welfare contributions, labor supply and prospective changes or adjustment of rates. In the event of conflict between the schedules for any classifications, the greater amount for the classification shall prevail as the minimum wage rate.
- B. If the Contractor finds it necessary during the progress of the work to secure a minimum wage rate for some additional classification, he shall make a request for such additional classification to the Authority, who in turn will obtain the additional classification and corresponding minimum wage rate from the State Department of Labor and Industries and advise the Contractor of the same. These additional classifications and minimum wage rates are then to be considered a part of the Contract, and the Contractor shall have no claim for additional compensation because of the additional classification and minimum wage rates.
- C. Where a question arises as to the classification in the schedule of the Department of Labor and Industries in which any employee is to be included, the decision is to be made by the State Department of Labor and Industries, through their duly authorized representative.
- D. Within three days from the date of the first advertisement or call for bids, two or more employers of labor, or two or more members of a labor organization, or the awarding officer or official, or five or more residents of the town or towns where the public works are to be constructed, may appeal to the associate commissioners for a wage determination, or a classification of employment as made by the Commissioner, by serving on the Commissioner a written notice to that effect. Thereupon the Commissioner shall immediately cause the associate commissioners to hold a public hearing on the Commissioner's action appealed from. The associate commissioners shall render their decision not later than three (3) days after the closing of the hearing. The decision of a majority of the associate commissioners shall be final, and notice thereof shall be given forthwith to the awarding official or public body. (Section 27A, Chapter 149, General Laws, Commonwealth of Massachusetts).
- E. Payments by employers to health and welfare plans under collective bargaining agreements or understandings between organized labor and employers shall be included for the purpose of establishing minimum wage rates as herein provided, (Section 26, Chapter 149, General Laws, Commonwealth of Massachusetts).
- F. The aforesaid rates of wages in the schedule of wage rates shall include payments by employers to health and welfare plans as provided in the previous section, and such payments shall be considered as payments to persons under this section performing work as herein provided. Any employer engaged in the

construction of such works who does not make payments to health and welfare plan where such payments are included in said rates of wages shall pay the amount of said payments directly to each employee engaged in said construction. (Section 27, Chapter 149, General Laws, as amended).

- G. The Contractor's attention is directed to further minimum wage provisions under Paragraph 3 of the Supplementary Conditions. In cases of conflict, the higher rate shall apply.

3. EQUAL EMPLOYMENT OPPORTUNITY (EEO)

**STANDARD FEDERAL EQUAL EMPLOYMENT
OPPORTUNITY CONSTRUCTION CONTRACT
SPECIFICATIONS
(EXECUTIVE ORDER NO.
11246):**

1. AS USED IN THESE SPECIFICATIONS:

- a. "COVERED AREA" MEANS THE GEOGRAPHICAL AREA DESCRIBED IN THE SOLICITATION FROM WHICH THIS CONTRACT RESULTED;
- b. "DIRECTOR" MEANS DIRECTOR, OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, UNITED STATES DEPARTMENT OF LABOR, OR ANY PERSON TO WHOM THE DIRECTOR DELEGATES AUTHORITY;
- c. "EMPLOYER IDENTIFICATION NUMBER" MEANS THE FEDERAL SOCIAL SECURITY NUMBER USED ON THE EMPLOYER'S QUARTERLY FEDERAL TAX RETURN, U.S. TREASURY DEPARTMENT FORM 941;
- d. "MINORITY" INCLUDES:
 - (i) BLACK (ALL PERSONS HAVING ORIGINS IN ANY OF THE BLACK AFRICAN RACIAL GROUPS NOT OF HISPANIC ORIGIN);
 - (ii) HISPANIC (ALL PERSONS OF MEXICAN, PUERTO RICAN, CUBAN, CENTRAL OR SOUTH AMERICAN, OR OTHER SPANISH CULTURE OR ORIGIN, REGARDLESS OF RACE);
 - (iii) ASIAN AND PACIFIC ISLANDER (ALL PERSONS HAVING ORIGINS IN ANY OF THE ORIGINAL PEOPLES OF THE FAR EAST, SOUTHEAST ASIA, THE INDIAN SUBCONTINENT, OR THE PACIFIC ISLANDS); AND
 - (iv) AMERICAN INDIAN OR ALASKAN NATIVE (ALL PERSONS HAVING ORIGINS IN ANY OF THE ORIGINAL PEOPLES OF NORTH AMERICA AND MAINTAINING IDENTIFIABLE TRIBAL AFFILIATIONS THROUGH MEMBERSHIP AND PARTICIPATION OR COMMUNITY IDENTIFICATION).

2. WHENEVER THE CONTRACTOR, OR SUBCONTRACTOR AT ANY TIER, SUBCONTRACTS A PORTION OF THE WORK INVOLVING ANY CONSTRUCTION TRADE, IT SHALL PHYSICALLY INCLUDE IN EACH SUBCONTRACT IN EXCESS OF \$10,000 THE PROVISIONS OF THESE SPECIFICATIONS AND THE NOTICE WHICH CONTAINS THE APPLICABLE GOALS FOR MINORITY AND FEMALE PARTICIPATION AND WHICH IS SET FORTH IN THE SOLICITATIONS FROM WHICH THIS CONTRACT RESULTED.

3. IF THE CONTRACTOR IS PARTICIPATING (PURSUANT TO 41 C.F.R. § 60-4.5) IN A HOMETOWN PLAN APPROVED BY THE U. S. DEPARTMENT OF LABOR IN THE COVERED AREA, EITHER INDIVIDUALLY OR THROUGH AN ASSOCIATION, ITS AFFIRMATIVE ACTION OBLIGATIONS ON ALL WORK IN THE PLAN AREA

(INCLUDING GOALS AND TIMETABLES) SHALL BE IN ACCORDANCE WITH THAT PLAN FOR THOSE TRADES WHICH HAVE UNIONS PARTICIPATING IN THE PLAN. CONTRACTORS MUST BE ABLE TO DEMONSTRATE THEIR PARTICIPATION IN AND COMPLIANCE WITH THE PROVISIONS OF ANY SUCH HOMETOWN PLAN. EACH CONTRACTOR OR SUBCONTRACTOR PARTICIPATING IN AN APPROVED PLAN

IS INDIVIDUALLY REQUIRED TO COMPLY WITH ITS OBLIGATIONS UNDER THE EEO CLAUSE, AND TO MAKE A GOOD FAITH EFFORT TO ACHIEVE EACH GOAL UNDER THE PLAN IN EACH TRADE IN WHICH IT HAS EMPLOYEES. THE OVERALL GOOD FAITH PERFORMANCE BY OTHER CONTRACTORS OR SUBCONTRACTORS TOWARD A GOAL IN AN APPROVED PLAN DOES NOT EXCUSE ANY COVERED CONTRACTOR'S OR SUBCONTRACTOR'S FAILURE TO MAKE GOOD FAITH EFFORTS TO ACHIEVE THE PLAN GOALS AND TIMETABLES.

4. THE CONTRACTOR SHALL IMPLEMENT THE SPECIFIC AFFIRMATIVE ACTION STANDARDS PROVIDED IN PARAGRAPHS (7)(a) THROUGH (p) OF THESE SPECIFICATIONS. THE GOALS SET FORTH IN THE SOLICITATION FROM WHICH THIS CONTRACT RESULTED ARE EXPRESSED AS PERCENTAGES OF THE TOTAL HOURS OF EMPLOYMENT AND TRAINING OF MINORITY AND FEMALE UTILIZATION THE CONTRACTOR SHOULD REASONABLY BE ABLE TO ACHIEVE IN EACH CONSTRUCTION TRADE IN WHICH IT HAS EMPLOYEES IN THE COVERED AREA. COVERED CONSTRUCTION CONTRACTORS PERFORMING CONSTRUCTION WORK IN GEOGRAPHICAL AREAS WHERE THEY DO NOT HAVE A FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION CONTRACT SHALL APPLY THE MINORITY AND FEMALE GOALS ESTABLISHED FOR THE GEOGRAPHICAL AREA WHERE THE WORK IS BEING PERFORMED. GOALS ARE PUBLISHED PERIODICALLY IN THE FEDERAL REGISTER IN NOTICE FORM, AND SUCH NOTICES MAY BE OBTAINED FROM ANY OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS OFFICE OR FROM FEDERAL PROCUREMENT CONTRACTING OFFICERS. THE CONTRACTOR IS EXPECTED TO MAKE SUBSTANTIALLY UNIFORM PROGRESS TOWARD ITS GOAL IN EACH CRAFT DURING THE PERIOD SPECIFIED.
5. NEITHER THE PROVISIONS OF ANY COLLECTIVE BARGAINING AGREEMENT, NOR THE FAILURE BY A UNION WITH WHOM THE CONTRACTOR HAS A COLLECTIVE BARGAINING AGREEMENT TO REFER EITHER MINORITIES OR WOMEN SHALL EXCUSE THE CONTRACTOR'S OBLIGATIONS UNDER THESE SPECIFICATIONS, EXECUTIVE ORDER NO. 11246, OR THE REGULATIONS PROMULGATED PURSUANT THERETO.
6. IN ORDER FOR THE NONWORKING TRAINING HOURS OF APPRENTICES AND TRAINEES TO BE COUNTED IN MEETING THE GOALS, SUCH APPRENTICES AND TRAINEES MUST BE EMPLOYED BY THE CONTRACTOR DURING THE TRAINING PERIOD, AND THE CONTRACTOR MUST HAVE MADE A COMMITMENT TO EMPLOY THE APPRENTICES AND TRAINEES AT THE COMPLETION OF THEIR TRAINING, SUBJECT TO THE AVAILABILITY OF EMPLOYMENT OPPORTUNITIES. TRAINEES MUST BE TRAINED PURSUANT TO TRAINING PROGRAMS APPROVED BY THE U.S. DEPARTMENT OF LABOR.
7. THE CONTRACTOR SHALL TAKE SPECIFIC AFFIRMATIVE ACTIONS TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY. THE EVALUATION OF THE CONTRACTOR'S COMPLIANCE WITH THESE SPECIFICATIONS SHALL BE BASED UPON ITS EFFORT TO ACHIEVE MAXIMUM RESULTS FROM ITS ACTIONS. THE CONTRACTOR

SHALL DOCUMENT THESE EFFORTS FULLY, AND SHALL IMPLEMENT AFFIRMATIVE ACTION STEPS AT LEAST AS EXTENSIVE AS THE FOLLOWING:

- a. ENSURE AND MAINTAIN A WORKING ENVIRONMENT FREE OF HARASSMENT, INTIMIDATION, AND COERCION AT ALL SITES, AND IN ALL FACILITIES AT WHICH THE CONTRACTOR'S EMPLOYEES ARE ASSIGNED TO WORK. THE CONTRACTOR, WHERE POSSIBLE, WILL ASSIGN TWO OR MORE WOMEN TO EACH CONSTRUCTION PROJECT. THE CONTRACTOR SHALL SPECIFICALLY ENSURE THAT ALL FOREMEN, SUPERINTENDENTS, AND OTHER ON-SITE SUPERVISORY PERSONNEL ARE AWARE OF AND CARRY OUT THE CONTRACTOR'S OBLIGATION TO MAINTAIN SUCH A WORKING ENVIRONMENT, WITH SPECIFIC ATTENTION TO MINORITY OR FEMALE INDIVIDUALS WORKING AT SUCH SITES OR IN SUCH FACILITIES.
- b. ESTABLISH AND MAINTAIN A CURRENT LIST OF MINORITY AND FEMALE RECRUITMENT SOURCES, PROVIDE WRITTEN NOTICE TO MINORITY AND FEMALE RECRUITMENT SOURCES AND TO COMMUNITY ORGANIZATIONS WHEN THE CONTRACTOR OR ITS UNIONS HAVE EMPLOYMENT OPPORTUNITIES AVAILABLE, AND MAINTAIN A RECORD OF THE ORGANIZATIONS' RESPONSES.
- c. MAINTAIN A CURRENT FILE OF THE NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF EACH MINORITY AND FEMALE OFF-THE-STREET APPLICANT AND MINORITY OR FEMALE REFERRAL FROM A UNION, A RECRUITMENT SOURCE OR COMMUNITY ORGANIZATION AND OF WHAT ACTION WAS TAKEN WITH RESPECT TO EACH SUCH INDIVIDUAL. IF SUCH INDIVIDUAL WAS SENT TO THE UNION HIRING HALL FOR REFERRAL AND WAS NOT REFERRED BACK TO THE CONTRACTOR BY THE UNION OR, IF REFERRED, NOT EMPLOYED BY THE CONTRACTOR, THIS SHALL BE DOCUMENTED IN THE FILE WITH THE REASON THEREFOR, ALONG WITH WHATEVER ADDITIONAL ACTIONS THE CONTRACTOR MAY HAVE TAKEN.
- d. PROVIDE IMMEDIATE WRITTEN NOTIFICATION TO THE DIRECTOR WHEN THE UNION OR UNIONS WITH WHICH THE CONTRACTOR HAS A COLLECTIVE BARGAINING AGREEMENT HAS NOT REFERRED TO THE CONTRACTOR A MINORITY PERSON OR WOMAN SENT BY THE CONTRACTOR, OR WHEN THE CONTRACTOR HAS OTHER INFORMATION THAT THE UNION REFERRAL PROCESS HAS IMPEDED THE CONTRACTOR'S EFFORTS TO MEET ITS OBLIGATIONS.
- e. DEVELOP ON-THE-JOB OPPORTUNITIES AND/OR PARTICIPATE IN TRAINING PROGRAMS FOR THE AREA WHICH EXPRESSLY INCLUDE MINORITIES AND WOMEN, INCLUDING UPGRADING PROGRAMS AND APPRENTICESHIP AND TRAINEE PROGRAMS RELEVANT TO THE CONTRACTOR'S EMPLOYMENT NEEDS, ESPECIALLY THOSE PROGRAMS FUNDED OR APPROVED BY THE DEPARTMENT OF LABOR. THE CONTRACTOR SHALL PROVIDE NOTICE OF THESE PROGRAMS TO THE SOURCES COMPILED UNDER (7)(b) ABOVE.
- f. DISSEMINATE THE CONTRACTOR'S EEO POLICY BY PROVIDING NOTICE OF THE POLICY TO UNIONS AND TRAINING PROGRAMS AND REQUESTING THEIR COOPERATION IN ASSISTING THE CONTRACTOR IN MEETING ITS EEO OBLIGATIONS; BY INCLUDING IT IN ANY POLICY MANUAL AND COLLECTIVE BARGAINING AGREEMENT; BY PUBLICIZING IT IN THE COMPANY

NEWSPAPER, ANNUAL REPORT, ETC.; BY SPECIFIC REVIEW OF THE POLICY WITH ALL MANAGEMENT PERSONNEL AND WITH ALL MINORITY AND FEMALE EMPLOYEES AT LEAST ONCE A YEAR; AND BY POSTING THE COMPANY EEO POLICY ON BULLETIN BOARDS ACCESSIBLE TO ALL EMPLOYEES AT EACH LOCATION WHERE CONSTRUCTION WORK IS PERFORMED.

- g. REVIEW, AT LEAST ANNUALLY, THE COMPANY'S EEO POLICY AND AFFIRMATIVE ACTION OBLIGATIONS UNDER THESE SPECIFICATIONS WITH ALL EMPLOYEES HAVING RESPONSIBILITY FOR HIRING, ASSIGNMENT, LAYOFF, TERMINATION OR OTHER EMPLOYMENT DECISIONS INCLUDING SPECIFIC REVIEW OF THESE ITEMS WITH ON- SITE SUPERVISORY PERSONNEL SUCH AS SUPERINTENDENTS, GENERAL FOREMAN, ETC., PRIOR TO THE INITIATION OF CONSTRUCTION WORK AT ANY JOB SITE. A WRITTEN RECORD SHALL BE MADE AND MAINTAINED IDENTIFYING THE TIME AND PLACE OF THESE MEETINGS, PERSONS ATTENDING, SUBJECT MATTER DISCUSSED, AND DISPOSITION OF THE SUBJECT MATTER.
- h. DISSEMINATE THE CONTRACTOR'S EEO POLICY EXTERNALLY BY INCLUDING IT IN ANY ADVERTISING IN THE NEWS MEDIA, SPECIFICALLY INCLUDING MINORITY AND FEMALE NEWS MEDIA, AND PROVIDING WRITTEN NOTIFICATION TO AND DISCUSSING THE CONTRACTOR'S EEO POLICY WITH OTHER CONTRACTORS AND SUBCONTRACTORS WITH WHOM THE CONTRACTOR DOES OR ANTICIPATES DOING BUSINESS.
- I. DIRECT RECRUITMENT EFFORTS, BOTH ORAL AND WRITTEN, TO MINORITY, FEMALE, AND COMMUNITY ORGANIZATIONS, TO SCHOOLS WITH MINORITY AND FEMALE STUDENTS AND TO MINORITY AND FEMALE RECRUITMENT AND TRAINING ORGANIZATIONS SERVING THE CONTRACTOR'S RECRUITMENT AREA AND EMPLOYMENT NEEDS. NOT LATER THAN ONE MONTH PRIOR TO THE DATE FOR THE ACCEPTANCE OF APPLICATIONS FOR APPRENTICESHIP OR OTHER TRAINING BY ANY RECRUITMENT SOURCE, THE CONTRACTOR SHALL SEND WRITTEN NOTICE TO ORGANIZATIONS SUCH AS THE ABOVE, DESCRIBING THE OPENINGS, SCREENING PROCEDURES, AND TESTS TO BE USED IN THE SELECTION PROCESS.
- j. ENCOURAGE PRESENT MINORITY AND FEMALE EMPLOYEES TO RECRUIT OTHER MINORITY PERSONS AND WOMEN AND, WHERE REASONABLE, PROVIDE AFTER SCHOOL, SUMMER AND VACATION EMPLOYMENT TO MINORITY AND FEMALE YOUTH BOTH ON THE SITE AND IN OTHER AREAS OF THE CONTRACTOR'S WORK FORCE.
- k. VALIDATE ALL TESTS AND OTHER SELECTION REQUIREMENTS WHERE THERE IS AN OBLIGATION TO DO SO UNDER 41 C.F.R. PART 60-3.
- l. CONDUCT, AT LEAST ANNUALLY, AN INVENTORY AND EVALUATION AT LEAST OF ALL MINORITY AND FEMALE PERSONNEL FOR PROMOTIONAL OPPORTUNITIES AND ENCOURAGE THESE EMPLOYEES TO SEEK OR PREPARE FOR, THROUGH APPROPRIATE TRAINING, ETC., SUCH OPPORTUNITIES.
- m. ENSURE THAT SENIORITY PRACTICES, JOB CLASSIFICATIONS, WORK ASSIGNMENTS, AND OTHER PERSONNEL PRACTICES DO NOT HAVE A DISCRIMINATORY EFFECT BY CONTINUALLY MONITORING ALL PERSONNEL

AND EMPLOYMENT RELATED ACTIVITIES TO ENSURE THAT THE EEO POLICY AND THE CONTRACTOR'S OBLIGATIONS UNDER THESE SPECIFICATIONS ARE BEING CARRIED OUT.

- n. ENSURE THAT ALL FACILITIES AND COMPANY ACTIVITIES ARE NONSEGREGATED EXCEPT THAT SEPARATE OR SINGLE-USER TOILET AND NECESSARY CHANGING FACILITIES SHALL BE PROVIDED TO ASSURE PRIVACY BETWEEN SEXES.
- o. DOCUMENT AND MAINTAIN A RECORD OF ALL SOLICITATIONS OF OFFERS FOR SUBCONTRACTS FROM MINORITY AND FEMALE CONSTRUCTION CONTRACTORS AND SUPPLIERS, INCLUDING CIRCULATION OF SOLICITATIONS TO MINORITY AND FEMALE CONTRACTOR ASSOCIATIONS AND OTHER BUSINESS ASSOCIATIONS.
- p. CONDUCT A REVIEW, AT LEAST ANNUALLY, OF ALL SUPERVISORS' ADHERENCE TO AND PERFORMANCE UNDER THE CONTRACTOR'S EEO POLICIES AND AFFIRMATIVE ACTION OBLIGATIONS.

8. CONTRACTORS ARE ENCOURAGED TO PARTICIPATE IN VOLUNTARY ASSOCIATIONS THAT ASSIST IN FULFILLING ONE OR MORE OF THEIR AFFIRMATIVE ACTION OBLIGATIONS SET FORTH IN PARAGRAPHS (7)(a) THROUGH (p). THE EFFORTS OF A CONTRACTOR ASSOCIATION, JOINT CONTRACTOR-UNION, CONTRACTOR-COMMUNITY, OR OTHER SIMILAR GROUP OF WHICH THE CONTRACTOR IS A MEMBER AND PARTICIPANT, MAY BE ASSERTED AS FULFILLING ANY ONE OR MORE OF ITS OBLIGATIONS UNDER PARAGRAPHS (7)(a) THROUGH (p) OF THESE SPECIFICATIONS, PROVIDED THAT THE CONTRACTOR ACTIVELY PARTICIPATES IN THE GROUP, MAKES EVERY EFFORT TO ASSURE THAT THE GROUP HAS A POSITIVE IMPACT ON THE EMPLOYMENT OF MINORITIES AND WOMEN IN THE INDUSTRY, ENSURES THAT THE CONCRETE BENEFITS OF THE PROGRAM ARE REFLECTED IN THE CONTRACTOR'S MINORITY AND FEMALE WORK FORCE PARTICIPATION, MAKES A GOOD FAITH EFFORT TO MEET ITS INDIVIDUAL GOALS AND TIMETABLES, AND CAN PROVIDE ACCESS TO DOCUMENTATION THAT DEMONSTRATES THE EFFECTIVENESS OF ACTIONS TAKEN ON BEHALF OF THE CONTRACTOR. THE OBLIGATION TO COMPLY, HOWEVER, IS THE CONTRACTOR'S AND FAILURE OF SUCH A GROUP TO FULFILL AN OBLIGATION SHALL NOT BE A DEFENSE FOR THE CONTRACTOR'S NONCOMPLIANCE.

9. A SINGLE GOAL FOR MINORITIES AND A SEPARATE SINGLE GOAL FOR WOMEN HAVE BEEN ESTABLISHED. THE CONTRACTOR, HOWEVER, IS REQUIRED TO PROVIDE EQUAL EMPLOYMENT OPPORTUNITY AND TO TAKE AFFIRMATIVE ACTION FOR ALL MINORITY GROUPS, BOTH MALE AND FEMALE, AND ALL WOMEN, BOTH MINORITY AND NON- MINORITY. CONSEQUENTLY, THE CONTRACTOR MAY BE IN VIOLATION OF THE EXECUTIVE ORDER IF A PARTICULAR GROUP IS EMPLOYED IN A SUBSTANTIALLY DISPARATE MANNER (EVEN THOUGH THE CONTRACTOR HAS ACHIEVED ITS GOAL FOR WOMEN GENERALLY, THE CONTRACTOR MAY BE IN VIOLATION OF THE EXECUTIVE ORDER IF A SPECIFIC MINORITY GROUP OF WOMEN IS UNDERUTILIZED).

10. THE CONTRACTOR SHALL NOT USE THE GOALS AND TIMETABLES OR AFFIRMATIVE ACTION STANDARDS TO DISCRIMINATE AGAINST ANY PERSON BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN.

11. THE CONTRACTOR SHALL NOT ENTER INTO ANY SUBCONTRACT WITH ANY PERSON OR FIRM DEBARRED FROM GOVERNMENT CONTRACTS PURSUANT TO EXECUTIVE ORDER NO. 11246.
12. THE CONTRACTOR SHALL CARRY OUT SUCH SANCTIONS AND PENALTIES FOR VIOLATION OF THESE SPECIFICATIONS AND OF THE EQUAL OPPORTUNITY CLAUSE, INCLUDING SUSPENSION, TERMINATION AND CANCELLATION OF EXISTING SUBCONTRACTS AS MAY BE IMPOSED OR ORDERED PURSUANT TO EXECUTIVE ORDER NO. 11246, AS AMENDED, AND ITS IMPLEMENTING REGULATIONS, BY THE OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS. ANY CONTRACTOR WHO FAILS TO CARRY OUT SUCH SANCTIONS AND PENALTIES SHALL BE IN VIOLATION OF THESE SPECIFICATIONS AND EXECUTIVE ORDER NO. 11246, AS AMENDED.
13. THE CONTRACTOR, IN FULFILLING ITS OBLIGATIONS UNDER THESE SPECIFICATIONS, SHALL IMPLEMENT SPECIFIC AFFIRMATIVE ACTION STEPS, AT LEAST AS EXTENSIVE AS THOSE STANDARDS PRESCRIBED IN PARAGRAPH (7) OF THESE SPECIFICATIONS, SO AS TO ACHIEVE MAXIMUM RESULTS FROM ITS EFFORTS TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY. IF THE CONTRACTOR FAILS TO COMPLY WITH THE REQUIREMENTS OF THE EXECUTIVE ORDER, THE IMPLEMENTING REGULATIONS, OR THESE SPECIFICATIONS, THE DIRECTOR SHALL PROCEED IN ACCORDANCE WITH 41 C.F.R. § 60-4.8.
14. THE CONTRACTOR SHALL DESIGNATE A RESPONSIBLE OFFICIAL TO MONITOR ALL EMPLOYMENT RELATED ACTIVITY TO ENSURE THAT THE COMPANY EEO POLICY IS BEING CARRIED OUT, TO SUBMIT REPORTS RELATING TO THE PROVISIONS HEREOF AS MAY BE REQUIRED BY THE GOVERNMENT AND TO KEEP RECORDS. RECORDS SHALL AT LEAST INCLUDE FOR EACH EMPLOYEE THE NAME, ADDRESS, TELEPHONE NUMBERS, CONSTRUCTION TRADE, UNION AFFILIATION IF ANY, EMPLOYEE IDENTIFICATION NUMBER WHEN ASSIGNED, SOCIAL SECURITY NUMBER, RACE, SEX, STATUS (E.G., MECHANIC, APPRENTICE TRAINEE, HELPER OR LABORER), DATES OF CHANGES IN STATUS, HOURS WORKED PER WEEK IN THE INDICATED TRADE, RATE OF PAY, AND LOCATIONS AT WHICH THE WORK WAS PERFORMED. RECORDS SHALL BE MAINTAINED IN AN EASILY UNDERSTANDABLE AND RETRIEVABLE FORM; HOWEVER, TO THE EXTENT THAT EXISTING RECORDS SATISFY THIS REQUIREMENT, CONTRACTORS SHALL NOT BE REQUIRED TO MAINTAIN SEPARATE RECORDS.
15. NOTHING HEREIN PROVIDED SHALL BE CONSTRUED AS A LIMITATION UPON THE APPLICATION OF OTHER LAWS THAT ESTABLISH DIFFERENT STANDARDS OF COMPLIANCE OR UPON THE APPLICATION OF REQUIREMENTS FOR THE HIRING OF LOCAL OR OTHER AREA RESIDENTS (E.G., THOSE UNDER THE PUBLIC WORKS EMPLOYMENT ACT OF 1977 AND THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM).

APPENDIX NO. 1

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER NO. 11246):

- (1) THE OFFEROR'S OR BIDDER'S ATTENTION IS CALLED TO THE "EQUAL OPPORTUNITY CLAUSE" AND THE "STANDARD FEDERAL EQUAL EMPLOYMENT SPECIFICATIONS" SET FORTH HEREIN.
- (2) (a) THE GOALS AND THE TIMETABLES FOR MINORITY AND FEMALE PARTICIPATION, EXPRESSED IN PERCENTAGE TERMS FOR THE CONTRACTOR'S AGGREGATE WORK FORCE IN EACH TRADE ON ALL CONSTRUCTION WORK IN THE COVERED AREA, ARE AS FOLLOWS:

TIMETABLES GOALS FOR MINORITY PARTICIPATION IN EACH TRADE EACH TRADE (SEE APPENDIX NO. 2)

GOALS FOR FEMALES PARTICIPATION IN 6.9%

GOALS FOR EACH YEAR EACH YEAR (SEE APPENDIX NO. 2)

GOALS FOR 6.9%

- (b) THESE GOALS ARE APPLICABLE TO ALL THE CONTRACTOR'S CONSTRUCTION WORK (WHETHER OR NOT IT IS FEDERAL OR FEDERALLY ASSISTED) PERFORMED IN THE COVERED AREA. IF THE CONTRACTOR PERFORMS CONSTRUCTION WORK IN A GEOGRAPHICAL AREA LOCATED OUTSIDE THE COVERED AREA, IT SHALL APPLY THE GOALS ESTABLISHED FOR SUCH GEOGRAPHICAL AREA WHERE THE WORK IS ACTUALLY PERFORMED. WITH REGARD TO THIS SECOND AREA, THE CONTRACTOR ALSO IS SUBJECT TO THE GOALS FOR BOTH ITS FEDERALLY INVOLVED AND NON FEDERALLY INVOLVED CONSTRUCTION.
- (c) THE CONTRACTOR'S COMPLIANCE WITH THE EXECUTIVE ORDER AND THE REGULATIONS AT 41 C.F.R. PART 60-4 SHALL BE BASED ON ITS IMPLEMENTATION OF THE EQUAL OPPORTUNITY CLAUSE, SPECIFIC AFFIRMATIVE ACTION OBLIGATIONS REQUIRED BY THE SPECIFICATIONS SET FORTH AT 41 C.F.R. 60-4.3(a), AND ITS EFFORTS TO MEET THE GOALS. THE HOURS OF MINORITY AND FEMALE EMPLOYMENT AND TRAINING MUST BE SUBSTANTIALLY UNIFORM THROUGHOUT THE LENGTH OF THE CONTRACT, AND IN EACH TRADE, AND THE CONTRACTOR SHALL MAKE A GOOD FAITH EFFORT TO EMPLOY MINORITIES AND WOMEN EVENLY ON EACH OF ITS PROJECTS. THE TRANSFER OF MINORITY OR FEMALE EMPLOYEE OR TRAINEES FROM CONTRACTOR TO CONTRACTOR OR FROM PROJECT TO PROJECT FOR THE SOLE PURPOSE OF MEETING THE CONTRACTOR'S GOALS SHALL BE A VIOLATION OF THE CONTRACT, THE EXECUTIVE ORDER, AND THE REGULATIONS IN AT 41 C.F.R. PART 60-4. COMPLIANCE WITH THE GOALS WILL BE MEASURED AGAINST THE TOTAL WORK HOURS PERFORMED.

- (3) THE CONTRACTOR SHALL PROVIDE WRITTEN NOTIFICATION TO THE

DIRECTOR OF THE OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS WITHIN 10 WORKING DAYS OF AWARD OF ANY CONSTRUCTION SUBCONTRACT IN EXCESS OF \$10,000 AT ANY TIER FOR CONSTRUCTION WORK UNDER THE CONTRACT RESULTING FROM THIS SOLICITATION. THE NOTIFICATION SHALL LIST THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE SUBCONTRACTOR; ESTIMATED DOLLAR AMOUNT OF THE SUBCONTRACT; ESTIMATED STARTING AND COMPLETION DATES OF THE SUBCONTRACT; AND THE GEOGRAPHICAL AREA IN WHICH THE SUBCONTRACT IS TO BE PERFORMED.

- (4) AS USED IN THIS NOTICE, AND IN THE CONTRACT RESULTING FROM THIS SOLICITATION, THE "COVERED AREA" IS ***(SEE NOTICE TO BIDDERS)***.

APPENDIX NO. 2
THE COMMONWEALTH OF MASSACHUSETTS
SUPPLEMENTAL EQUAL EMPLOYMENT
OPPORTUNITY
ANTI DISCRIMINATION AND AFFIRMATIVE ACTION
PROGRAM

- I. FOR PURPOSES OF THIS CONTRACT, "minority" refers to Asian-Americans, Blacks, Spanish Surnamed Americans, North American Indians, and Cape Verdeans. "Commission" refers to the Massachusetts Commission Against Discrimination.
- II. During the performance of this contract, the Contractor and all of (his) Subcontractors (hereinafter collectively referred to as the Contractor), for himself, his assignees, and successors in interest, agree as follows:
 1. In connection with the performance of work under this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, age or sex. The aforesaid provision shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment advertising, recruitment layoff; termination; rates of pay or other forms of compensation, conditions or privileges of employment; and selection for apprenticeship. The Contractor shall post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Commission setting forth the provisions of the Fair Employment Practices Law of the Commonwealth (M.G.L. Chapter 151B).
 2. In connection with the performance of work under this contract, the Contractor, shall undertake in good faith affirmative action measures designed to eliminate any discriminatory barriers in the terms and conditions of employment on the grounds of race, color, religious creed, national origin, age or sex, and to eliminate and remedy any effects of such discrimination in the past. Such affirmative action shall entail positive and aggressive measures to ensure equal opportunity in the areas of hiring, upgrading, demotion or transfer, recruitment, layoff or termination, rate of compensation, and in service or apprenticeship training programs. This affirmative action shall include all action required to guarantee equal employment opportunity for all persons, regardless of race, color, religious creed, national origin, age, or sex. A purpose of this provision is to ensure to the fullest extent possible an adequate supply of skilled tradesmen for this and future Commonwealth public construction projects.
- III. 1. As part of his obligation of remedial action under the foregoing section, the Contractor shall maintain on this project a not less than 15.3 percent ratio of minority employee man hours to total man hours in each job category, including but not limited to bricklayers, carpenters, cement masons, electricians, ironworkers, operating engineers, and those "classes of work enumerated in Section 44F of Chapter 149 of the Massachusetts General Laws.

2. In the hiring of minority journeymen, apprentices, trainees and advanced trainees, the Contractor shall rely on referrals from a multi employer affirmative action program approved by the Commission, traditional referral methods utilized by the construction industry, and referrals from agencies, not more than three in number at any one time, designated by the Liaison Committee or the Commission.

IV. 1. At the discretion of the Commission there may be established for the life of this contract a body to be known as the Liaison Committee. The Liaison Committee shall be composed of one representative each from the agency or agencies administering this project, herein after called the administering agency, the Commission and such other representatives as may be designated by the Commission in conjunction with the administering agency.

2. The Contractor (or his agent, if any, designated by him the on-site equal employment opportunity officer) shall recognize the Liaison Committee as an affirmative action body, and shall establish a continuing working relationship with the Liaison Committee, consulting with the Liaison Committee on all matters related to minority recruitment, referral, employment and training.
3. The Contractor shall prepare projected manning tables on a quarterly basis. These shall be broken down into projections, by week, of workers required in each trade. Copies shall be furnished one week in advance of the Commencement of the period covered, and also when updated, to the Commission and Liaison Committee.
4. Records of employment referral orders, prepared by the Contractor, shall be made available to the Commission and to the Liaison Committee on request.
5. The Contractor shall prepare weekly reports in a form approved by the Commission of hours worked in each trade by each employee, identified as minority or non-minority. Copies of these shall be provided at the end of each such week to the Commission and to the Liaison Committee.

- V. If the Contractor shall use any subcontractor on any work performed under this contract, he shall take affirmative action to negotiate with qualified minority subcontractors. This affirmative action shall cover both pre-bid and postbid periods. It shall include notification to the Office of Minority business Assistance (within the Executive Office of Communities and Development) or its designee, when bids are in preparation, of all products, work or services for which the Contractor intends to negotiate bids.

VI. **Not Used**

- VII. A designee of the Commission and a designee of the Liaison Committee shall each have right of access to the construction site.

VIII. Compliance with Requirements

The Contractor shall comply with the provisions of Executive Order No. 74, as

amended by Executive Order No. 116 dated May 1, 1975, and of Chapter 151B as amended, of the Massachusetts General Laws, both of which are herein incorporated by reference and made a part of this contract.

IX. Non-Discrimination

The Contractor, in the performance of all work after award, and prior to completion of the contract work, will not discriminate on grounds of race, color, religious creed, national origin, age or sex in employment practices, in the selection or retention of subcontractors, or in the procurement of materials and rentals of equipment.

X. Solicitations for Sub-Contracts, and for the Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor either for work to be performed under a subcontract or for the procurement of materials or equipment each potential subcontractor or supplier shall be notified in writing by the Contractor of the Contractor's obligations under this contract relative to non-discrimination and affirmative action.

XI. Bidders Certification Requirement

For Bidders Certification Requirements, please refer to the Form for Bid included in the Proposal Form for this Contract.

XII. Contractor's Certification

The Contractor's certification form must be signed by all successful low bidder(s) prior to award by the contracting agency.

XIII. Compliance - Information, Reports and Sanctions

1. The Contractor will provide all information and reports required by the administering agency or the Commission on instructions issued by either of them and will permit access to its facilities and any books, records, accounts and other sources of information which may be determined by the Commission to affect the employment of personnel. This provision shall apply only to information pertinent to the Commonwealth's supplementary affirmative action contract requirements. Where information required is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the administering agency or the Commission as appropriate and shall set forth what efforts he has made to obtain the information.
2. Whenever the administering agency, the Commission, or the Liaison Committee believes the General Contractor or any Subcontractor may not be operating in compliance with the terms of this Section, the Commission directly, or through its designated agent, shall conduct an appropriate investigation, and may confer with the parties, to determine if such contractor is operating in compliance with the terms of this Section. If the Commission or its agent finds the General Contractor or any subcontractor not in compliance, it shall make a preliminary report on non-compliance, and notify such Contractor in writing of such steps as will in the judgement of the Commission or its agent bring such Contractor into compliance. In the event that such Contractor fails or refuses to fully perform such steps, the

Commission shall make a final report of noncompliance, and recommend to the administering agency the imposition of one or more of the sanctions listed below. If, however, the Commission believes the General Contractor or any Subcontractor has taken or is taking every possible measure to achieve compliance, it shall not make a final report of noncompliance. Within fourteen days of the receipt of the recommendations of the Commission, the administering agency shall move to impose one or more of the following sanctions, as it may deem appropriate to attain full and effective enforcement:

- (a) The recovery by the administering agency from the General Contractor of 1/100 of 1% of the contract award price or \$1000 whichever sum is greater, in the nature of liquidated damages or, if a Subcontractor is in non-compliance, the recovery by the administering agency from the General Contractor, to be assessed by the General Contractor as a back charge against the Subcontractor, of 1/10 of 1% of the subcontract price, or \$400 whichever sum is greater, in the nature of liquidated damages, for each week that such party fails or refuses to comply;
 - (b) The suspension of any payment or part thereof due under the contract until such time as the General Contractor or any Subcontractor is able to demonstrate his compliance with the terms of the contract;
 - (c) The termination, or cancellation, of the contract, in whole or in part, unless the General Contractor or any Subcontractor is able to demonstrate within a specified time his compliance with the terms of the contract;
 - (d) The denial to the General Contractor or any Subcontractor of the right to participate in any future contracts awarded by the administering agency for a period of up to three years.
3. If at any time after the imposition of one or more of the above sanctions a Contractor is able to demonstrate that he is in compliance with this Section, he may request the administering agency, in consultation with the Commission, to suspend the sanctions conditionally, pending a final determination by the Commission as to whether the Contractor is in compliance. Upon final determination of the Commission, the administering agency, based on the recommendation of the Commission, shall either lift the sanctions or reimpose them.
4. Sanctions enumerated under Sections XIII-2 shall not be imposed by the administering agency except after an adjudicatory proceeding, as that term is used M.G.L. c. 30A, has been conducted. No investigation by the Commission or its agent shall be initiated without prior notice to the Contractor.

XIV. Severability

The provisions of this section are severable, and if any of those provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

A. Contractor's Certification

A contractor will not be eligible for award of a contract unless such contractor has submitted the following certification, which is deemed a part of the resulting contract:

CONTRACTOR'S CERTIFICATION

Contractor

certifies that:

1. it intends to use the following listed construction trades in the work under the contract
_____ and _____
2. will comply with the minority manpower ratio and specific affirmative action steps contained herein; and
3. will obtain from each of its subcontractors and submit to the contracting or administering agency prior to the award of any subcontract under this contract the subcontractor certification required by these bid conditions.

(Signature of authorized representative of contractor)

B. Subcontractors' Certification

Prior to the award of any subcontract, regardless of tier, the prospective subcontractor must execute and submit to the Prime Contractor the following certification, which will be deemed a part of the resulting subcontract:

SUBCONTRACTORS' CERTIFICATION

Subcontractor

certifies that:

1. it intends to use the following listed construction trades in the work under the subcontract and

2. will comply with the minority manpower ratio and specific affirmative action steps contained herein; and
3. will obtain from each of the subcontractors prior to the award of any subcontract under this subcontract the subcontractor certification required by these bid conditions.

(Signature of authorized representative of subcontractor)

In order to ensure that the said subcontractors certification becomes a part of all subcontracts under the prime contract, no subcontract shall be executed until an authorized representative of the state agency (or agencies) administering this project has determined, in writing, that the said certification has been incorporated in such subcontract, regardless of tier. Any subcontract executed without such written approval shall be void.